IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 30773 of 2007(L)

OS.200/1995 of SUB COURT, VADAKARA
.....
PETITIONER:

JANAKI, W/O KANNAN, AGED 67 YEARS,
HOUSEWIFE, KUTTIAMBRATH THAZHA KUNIYIL HOUSE,
KARTHIKAPPALLY AMSOM, KURINJALIYODE DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT, KERALA STATE.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENTS:
---
1. PADINJAREPUNATHIL PREMI, W/O VASU,
AGED 39 YEARS, HOUSEWIFE, VYKKILASSERY AMSOM DESOM
VATAKARA TALUK, KOZHIKODE DISTRICT, KERALA STATE.

2. KUTTIAMBRATHTHAZHA KUNIYIL SAROJINI
W/O NANU, HOUSEWIFE, AGED 47 YEARS, 38/8D,
E.Q.A. COMPLEXES, PALAVANTHANGAL POST, MADRAS 114.

3. KUTTIAMBRATH THAZHA KUNIYIL RAJAN,
S/O KANNAN, AGED 45 YEARS,TRADER, KARTHIKAPPALLY
AMSOM, KURINJALIYODE DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT, KERALA STATE,

4. KUTTIAMBRATH THAZHA KUNIYIL CHANDRI, W/O
KUNHIKANNAN, AGED 43 YEARS, HOUSEWIFE,
KARTHIKAPPALY AMSOM, KURINJALIYODE DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT,
KERALA STATE.

5. KUTTIAMBRATH THAZHA KUNIYIL CHANDRAN, S/
O KANNAN, AGED 37 YEARS, TRADER KARTHIKAPPALY
AMSOM, KURINJALIYODE DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT, KERALA STATE.

6. KUTTIAMBRATH THAZHA KUNIYIL AJITHA,
W/O KUNHIRAMAN, AGED 35 YEARS, TRADER,
KARTHIKAPPALLY AMSOM, KURINJALIYODE DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT,
KERALA STATE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

==========

W.P(C).No.30773 of 2007

==========

Dated this the 30th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order, Ext.P15 in O.S.No.200 of 2005. The suit is one for partition and I must say that it is unfortunate that the learned Subordinate Judge, who passed the preliminary decree had not understood the impact and purport of a preliminary decree to be passed in a case for partition. By the judgment, it is held that the exact identity and the extent of the suit property, correct value of the structure in the plaint property as well as equities and reservation and the question of mesne profits, etc. are relegated by the Subordinate Judge to be decided in the final decree proceedings.

2. There is no dispute between the parties that the property belonged to their predecessor, who got an extent of 1 acre and 4 cents of land. According to the plaintiff, 30 cents were assigned and the balance 74 are available for partition. The

defendants would contend that there are only two segments of properties available, which may have a total extent of 37 cents.

3. Now when the final decree application is filed, the writ petitioner has moved an application contending that the property which exclusively belongs to him by virtue of a document of the year 1969 is also attempted to be partitioned, which is not really the subject matter of the suit. Under ordinarily circumstances, such issues cannot loom large in a final decree proceedings. But unfortunately, in the preliminary decree itself the identification and extent of the property to be divided are relegated to the final decree proceedings. So, in order to have a proper resolution of the dispute between the parties, it may be necessary to find out the 1 acre and 4 cents and thereafter also mark the properties that had been assigned and find out the reminder. Similarly if the decree schedule takes in a portion of the property covered by 1969 document which if exclusively belongs to the revision petitioner will also have to be excluded. So these are all matters which require a detailed consideration by the court.

4. Therefore, I set aside the order of the court below and direct the court below to give directions to the Commissioner first

to locate the 104 cents of property exclusively owned by the owner then mark the portions that had been assigned during his life time and find out the remaining property available for division. He should also find out whether any property claimed by the plaintiff takes in a portion of the document of the year 1969 and if it is included that may have to be excluded and partition final decree to be passed. If there is any objection for any of the parties, the court may also consider the same and pass appropriate orders.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 31/10